IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.2718 OF 2007

Union or India and anr. ..Petitioners.
Vs.
S.M. Salim. ..Respondent.

Mr.T.J.Pandian for the Petitioners.
Mr.G.S.Walia & Rahul Walia for the Respondent.

CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : 16th April, 2007

P.C.

1. Heard.

2. The petitioner was to retire on 30.6.2000 by superannuation. However, he actually retired on 29.11.2002. Thus, from 30.6.2000 to 29.11.2002 he continued in service after superannuation. Therefore, petitioners are recovering salary which was paid to the respondent. The said act of the petitioners was challenged by the respondent by filing Revision Application No.288 of 2006 which was allowed by the members of the Central Administrative Tribunal. The said order is challenged before this court. We find that the day one a person enters into service, his birth date is known to the petitioners and therefore, the date of superannuation is also known to the petitioners. Inspite of this, they have allowed the respondent to

work beyond the date of superannuation during the aforesaid period. Even though the respondent worked after superannuation, the employer in the present matter had promoted him. Considering the above aspects, it appears that there was no fraud committed by the respondent. It was lapse on the part of the petitioners. Having extracted the work from the respondent, it is unjust to recover the salary paid to the respondent. We find this proposition in the judgment of the Apex Court reported in **A.I.R.1994 S.C. 599 in the matter of State of Bihar Vs. Narasimha Sundram, 2003(2), Central Administrative Tribunal returns, (Allahabad Bench) in the matter of Komal Vs. Union of India and ors., so also in (1998) 6 S.C.C. 338 in the matter of Ramswaroop Masawan Vs. Municipal Council and another.** We refrain to entertain the petition. Petition is therefore, rejected.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**